

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

GARY SKIPPER,

Plaintiff,

v.

No. CIV 09-521 ACT/CG

**CITY OF ROSWELL, a municipal corporation;
ROBERT SMITH, individually and in his official
capacity; and PETE HERNANDEZ, individually
and in his official capacity,**

Defendants.

ORDER

This matter is before the Court on Plaintiff Gary Skipper's Fed.R.Civ.P. 72(a) Objections ("Objections") [Doc.62] to Magistrate Judge Garza's Order ("Order") [Doc.55] denying Plaintiff's Motion to Compel Continued Deposition of Pete Hernandez and for Sanctions ("Motion to Compel"). [Doc. 31.]


Plaintiff argues that Magistrate Judge Garza denied his Motion to Compel as "untimely" and that her "stated rationale" for the Order is contrary to Tenth Circuit law as well as decisions from the District of New Mexico in that the Order put "form over substance." [Doc. 62 at p.2.] However, the Order does not reflect the Magistrate Judge's rationale. The Order reflects that Judge Garza reviewed the filings of counsel and also heard arguments of counsel, but the Court denied the Motion to Compel without stating a reason or basis. [Doc. 55.]

This Court may modify or set aside any part of an magistrate judge's order "that is clearly erroneous or is contrary to law." Fed.R.Civ.P. 72(a). Because Magistrate Judge Garza

had set the deadline for filing motions relating to discovery for February 26, 2010, and Plaintiff filed his Motion to Compel on March 18, 2010, this Court cannot find that the Order is clearly erroneous or contrary to law. The motion was not filed within the deadline set by Judge Garza and was therefore untimely.

The Defendants have filed two Motions in Limine that involve the testimony of Defendant Pete Hernandez. [Doc. 35 and Doc. 53.] The Court will re-visit the issue of whether Plaintiff should be permitted to continue the deposition of Mr. Hernandez at the time it considers the arguments presented in the Motions in Limine.

IT IS THEREFORE ORDERED that Plaintiff's Objections to Magistrate Judge Garza's Order Denying Motion to Compel Deposition of Pete Hernandez and for Sanctions is denied.


ALAN C. TORGERSON
United States Magistrate Judge